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(Act Feb. 26, 1877, Acts 1876-77, p. 95, c. 110) was accepted, authorizing it to run its trains into a certain depot in the town over a connecting line. Held, that the company could fulfill its duty either by running to such depot over the other line or by constructing its own line thereto.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 105, 113, 114.]

BENNETT *v.* COMMONWEALTH.

Dec. 6, 1906.

[55 S. E. 698.]

1. **Jury—Venire Facias—Sufficiency.**—Va. Code 1904, § 4018, provides that the writ of venire facias, in case of felony, shall command the officer to summon a specified number of persons to attend the court wherein accused is to be tried, and the jury so summoned may be used for the trial of all cases which may be tried at that term. An indictment against accused was pending in a court when a venire facias was issued for the trial of a third person under indictment for a felony. At the time of the issuance of the writ accused was in another state though not a fugitive. Held, that he could not complain because the jury summoned under the writ was used for his trial.

2. **Criminal Law—Continuance—Denial of Application.**—Accused was forced to trial in the absence of a material witness on the assurance of the court that the witness would be produced before the evidence closed. After all the witnesses had been examined the court adjourned the case from time to time to await the appearance of the absent witness who finally appeared and testified. Held, that accused was not prejudiced by the action of the court.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 1515.]

3. **Same—Separation of Jury.**—One was charged with an offense not of such a character as to make it necessary to keep the jury together. The court, after the examination of all the witnesses present, adjourned the case from time to time for an absent witness. Some of the jurors, during the adjournments, attended to their own business elsewhere than at the courthouse, and others were used in the trial of other cases. It was not suggested that the jury were contaminated, nor did it appear that they were prejudiced by the adjournments. Held, that accused was not entitled to reversal of a judgment of conviction because of such separation of the jury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, §§ 2039-2047.]

4. **Same—New Trial—Grounds—Sufficiency.**—A new trial in a crim-

inal case for newly discovered evidence, chiefly impeaching, is properly denied.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Criminal Law, §§ 2331, 2332.]

SCHWALM *v.* BEARDSLEY.

Jan. 17, 1907.

[56 S. E. 135.]

1. Deeds—Construction—Description of Property—Plats.—Where a deed described land as a lot laid off and designated on a certain plat of survey, the plat becomes as much a part of the deed as if it were copied into it.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 16, Deeds, §§ 323, 324.]

2. Boundaries—Description—Party Walls.—A deed describing land as extending to a party wall, where the grantor owned the land on both sides of the wall, conveys to the center of the wall, notwithstanding a discrepancy in the width of the lot resulting from this construction, since courses and distances yield to monuments called for in a deed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 8, Boundaries, § 18.]

MORGAN *et al.* *v.* BOOKER.

Jan. 17, 1907.

[56 S. E. 137.]

1. Appeal—Review—Additional Proofs.—In a suit by the holder of a note to set aside an order of the court, and an entry by the clerk of court, in pursuance thereof, releasing a deed of trust securing the note, where the evidence is conflicting as to the transfer of the note to the complainant, and the credibility of witnesses is involved, and it is not clear that justice has been done, a decree in favor of complainant will be reversed, and an issue framed to be tried before a jury to ascertain whether the complainant was in good faith the owner and holder of the note.

2. Witnesses—Competency—Transactions with Decedents.—In an action by the holder of a note against the grantor in a deed of trust to set aside a release of the deed of trust, though the note had been transferred to the complainant by a person since deceased, complainant is a competent witness on the issue whether he was in good faith the owner and holder of the note for value, where the amount of the note had been paid after its alleged transfer to the original holder.